

## § 793.11

named occupation, he will be considered to be primarily employed in such occupation during that workweek. The answer will necessarily depend upon the facts in each case.

### § 793.11 Combination announcer, news editor and chief engineer.

The 13(b)(9) exemption, as was made clear during the debate on the amendment, is intended to apply to employees employed in the named occupations by small market radio and television stations. It is known at the time of such debate that these stations employ only a small number of employees and that, at times, an employee of such a station may perform a variety of duties in connection with the operation of the station. For example, an employee may perform work both as an announcer and as a news editor. In such cases, the primary employment test under the section 13(b)(9) exemption will be considered to be met by an employee who is employed primarily in any one or any combination of the named occupations. Thus an employee who works both as an announcer and news editor for the greater part of the workweek will be considered to be primarily employed in the named occupations during that week.

### § 793.12 Related and incidental work.

An employee who is employed primarily in one or more of the named occupations may also be engaged in other duties pertaining to the operation of the station by which he is employed. The Senate Report states that, for purposes of this exemption, employees who are primarily employed in the named occupation "may engage in related activities, including the sale of broadcasting time for the broadcasting company by which they are employed, as an incident to their principal occupation", (S. Rept. 145, 87th Cong., 1st sess., p. 37). Time spent in such duties will not be considered to defeat the exemption if the employee is primarily employed in the named occupations and if the other requirements of the exemption are met.

## 29 CFR Ch. V (7-1-14 Edition)

### § 793.13 Limitation on related and incidental work.

The related work which an employee may perform is clearly limited in nature and extent by a number of requirements. One limitation is that the work must be an incident to the employee's primary occupation. The work therefore may not predominate over his primary job. He is not "employed as" an announcer, news editor, or chief engineer if his dominant employment is in work outside such occupations (see *Walling v. Haden*, 153 F. 2d 196, cert. denied 328 U.S. 866). For instance, an announcer who spends 40 hours of his 48 hour workweek in selling broadcasting time would not be considered to be "incidentally" engaged in such selling. Selling would in such circumstances be his primary occupation. His duties as an announcer must constitute his primary job. Another requirement is that the work of the employees must be performed "for the broadcasting company by which they are employed \* \* \*" (see S. Rept. cited in § 793.12). Sale of broadcasting time for a company which does not employ the employee as an announcer, news editor, or chief engineer, is not exempt work. Work which is not performed for the station by which the employee is employed, is not intended to be exempt. For a discussion of the effect on the exemption of nonexempt work see §§ 793.19 to 793.21.

### § 793.14 Employed by.

The application of the exemption is limited to employees "employed by" a radio or television station. The question whether a worker is employed "by" a radio or television station depends on the particular facts. (See *Rutherford Food Corporation v. McComb*, 331 U.S. 722; *U.S. v. Silk*, 331 U.S. 704.) In general, however, an employee is so employed where he is hired by the radio or television station, engages in its work, is paid by the radio or television station and is under its supervision and control. Employees of independent contractors and of others who work for a radio or television station but who are not "employed by" such station are not exempt under this exemption even if they engage in the named occupation. (*Mitchell v. Kroger*, 248, F. 2d 935.)